

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JUSTIN CREDICO,
Plaintiff,
v.
FACEBOOK INC.,
Defendant.

Case No. [15-cv-05810-JSC](#)

**ORDER DENYING MOTION FOR
RECONSIDERATION**

Re: Dkt. No. 10

Plaintiff, an inmate in the Federal Detention Center in Philadelphia, Pennsylvania, filed this pro se civil rights complaint against Facebook, Inc. (“Facebook”), and a number of “Doe” defendants who are “agents” of the Federal Bureau of Investigation (“F.B.I.”) and other “unknown” federal agencies.¹ He was granted leave to proceed in forma pauperis.

The case was dismissed under 28 U.S.C. § 1915(e) as frivolous because the complaint duplicated an in forma pauperis complaint Plaintiff filed in a prior case, *Credico v. Facebook, Inc., et al.*, No. 14-0881 JS (E.D. Pa.), which case was dismissed for failure to state a claim upon which relief can be granted. *See Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (in forma pauperis complaint that merely repeats pending or previously litigated claims may be considered frivolous and dismissed under the authority of 28 U.S.C. § 1915(d)²); *Bailey v. Johnson*, 846 F.2d

¹ Plaintiff consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). (Dkt. Nos. 2, 6.)

² Prior to 1996, the current version of Section 1915(e) was Section 1915(d).

1 1019, 1021 (5th Cir. 1988) (in forma pauperis complaint that repeats previously litigated claims
2 may be dismissed).

3 Plaintiff has filed a motion for reconsideration. Rule 60(b) provides for relief from final
4 judgment where one or more of the following is shown: (1) mistake, inadvertence, surprise or
5 excusable neglect; (2) newly discovered evidence which by due diligence could not have been
6 discovered in time to move for a new trial; (3) fraud by the adverse party; (4) the judgment is void;
7 (5) the judgment has been satisfied; (6) any other reason justifying relief. Fed. R. Civ. P. 60(b).
8 Plaintiff does not specify what provision of Rule 60(b) compels relief from judgment, but based
9 on his argument, the only provision that would appear to apply is Rule 60(b)(6).

10 Plaintiff argues that this Court should not have dismissed this case under the doctrine of res
11 judicata because the prior dismissal was not done by a court of “competent jurisdiction.” In
12 support of his argument that the Eastern District of Pennsylvania was not of “competent
13 jurisdiction,” Plaintiff cites the “click wrap agreement” of Facebook, Inc., which he asserts
14 requires that all claims against Facebook, Inc., be brought in the Northern District of California.

15 This case was not dismissed on the grounds of res judicata, however. Plaintiff filed his in
16 forma pauperis complaint in the Eastern District of Pennsylvania, and after he lost there, he filed
17 the same complaint in this Court again seeking leave to proceed in forma pauperis. Under *Cato*,
18 that renders this instant in forma pauperis complaint frivolous under 28 U.S.C. § 1915(e). In *Cato*,
19 the Court held that “there is no abuse of discretion where a district court dismisses an in forma
20 pauperis complaint ‘that merely repeats pending or previously litigated claims’” 345 F.3d at 1105
21 n.2 (quoting *Bailey*, 846 F.2d at 1021, and citing *Denton v. Hernandez*, 504 U.S. 25, 30, (1992)
22 (recognizing Congress's concern that “a litigant whose filing fees and court costs are assumed by
23 the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous,
24 malicious, or repetitive lawsuits”). As in *Cato*, the dismissal of the instant case was based on
25 Section 1915(e)’s bar on filing repetitive in forma pauperis lawsuits. It is noted, that the dismissal,
26 although with prejudice, does not preclude Plaintiff from pursuing his claims in a paid complaint.
27 *See id.* To the extent that Plaintiff believes the Eastern District of Pennsylvania did not have
28 jurisdiction to decide his claims, he can make that argument in that court, on appeal from that

1
2 court's decision, or in response to a res judicata argument raised in a new action in which he pays
3 the filing fee.

4 Plaintiff's motion for reconsideration of the dismissal order is DENIED.

5 **IT IS SO ORDERED.**

6 Dated: August 1, 2016

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8 
9 JACQUELINE SCOTT CORLEY
United States Magistrate Judge

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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JUSTIN CREDICO,
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CERTIFICATE OF SERVICE

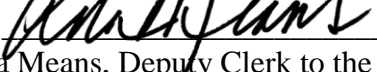
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 1, 2016, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Justin Credico ID: Prisoner Id 71239066
Federal Detention Center
700 Arch Street
P.O. Box 562
Philadelphia, PA 19105

Dated: August 1, 2016

Susan Y. Soong
Clerk, United States District Court

By: 
Ada Means, Deputy Clerk to the
Honorable JACQUELINE SCOTT CORLEY